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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

FILED

AUG 18 2008

MB

MICHAEL W. DOBBINS
CLERK, U.S. DISTRICT COURT

United States of America ex rel.,)
DREW TERRELL,)

Petitioner,)

-VS-)

Case No. 08 C 2328

EDDIE JONES, Warden,)
Respondent.)

The Honorable
MATTHEW F. KENNELLY,
Presiding Judge.

MOTION FOR LEAVE TO FILE AND SUPPLEMENTAL CLAIM(S) HEREWITH

NOW COMES Petitioner Drew Terrell, pro se, and pursuant to Rule 15(d) of the Federal Rules of Civil Procedure, for leave to supplement his petition for habeas corpus to add properly exhausted claim from his direct appeal that he previously could not make an informed decision to include because of the lack of a complete and comprehensive record at time of his initial filing. In support thereof, petitioner states as follows:

1. On July 30, petitioner filed a petition for the issuance of a writ of habeas corpus. To date, the instant action has not been placed this Court's trial calendar, and since venue is still at issue, in effect, there is no responsive pleading before this Court and therefore the respondent will not be prejudice by the proposed supplement offered herein.

2. Petitioner seeks to supplement subparagraph (a) thru (e) of paragraph 12 of his petition for a writ of habeas corpus, to add subparagraph (f) thru (m) to set forth further allegations that he is being held unlawful in custody in violation of:

- (f) DUE PROCESS UNDER THE FOURTEENTH AMENDMENT BECAUSE THE STATE COURT'S DENIAL OF HIS CLAIM THAT DURING HIS INTERROGATION, THE POLICE IGNORED HIS REPEATED REQUESTS TO MAKE A TELEPHONE CALL AND KEPT HIM INCOMMUNICADO FOR APPROXIMATELY NINE HOURS, IS CONTRARY TO OR AN UNREASONABLE APPLICATION OF CLEARLY ESTABLISHED FEDERAL LAW AS DEFINED BY THE UNITED STATES SUPREME COURT.

- (g) DUE PROCESS UNDER THE FOURTEENTH AMENDMENT BECAUSE THE STATE COURT'S DENIAL OF HIS CLAIM THAT HIS STATEMENTS TO THE POLICE SHOULD HAVE BEEN SUPPRESSED AS BEING INVOLUNTARY WHERE STATE FAILED TO PRODUCE OR EXPLAIN THE ABSENCE OF THREE MATERIAL WITNESSES AT HIS SUPPRESSION HEARING, IS CONTRARY TO OR AN UNREASONABLE APPLICATION OF CLEARLY ESTABLISHED FEDERAL LAW AS DEFINED BY THE UNITED STATES SUPREME COURT.
- (h) DUE PROCESS UNDER THE FIFTH AND FOURTEENTH AMENDMENTS BECAUSE THE STATE COURT'S DENIAL OF HIS CLAIM THAT THE EVIDENCE FAILED TO ESTABLISH BEYOND A REASONABLE DOUBT THAT PETITIONER INTENTIONALLY OR KNOWINGLY KILLED THE VICTIM AND THEREFORE HIS CONVICTION FOR FIRST DEGREE MURDER SHOULD HAVE BEEN REDUCED TO INVOLUNTARY MANSLAUGHTER, IS BASED ON AN UNREASONABLE DETERMINATION OF FACT IN LIGHT OF THE EVIDENCE PRESENTED IN THE STATE COURT'S PROCEEDINGS.
- (i) DUE PROCESS UNDER THE FIFTH AND FOURTEENTH AMENDMENTS BECAUSE THE STATE COURT'S DENIAL OF HIS CLAIM THAT THE ILLINOIS LEGISLATURE HAS FAILED TO LIMIT THE SCOPE OF THE CRIMINAL SEXUAL ASSAULT STATUTE ONLY TO THOSE ACTS DONE FOR THE PURPOSE OF SEXUAL GRATIFICATION OR AROUSAL OF THE VICTIM OR THE ACCUSED RESULTING IN SAID STATUTE BEING OVERLY BROAD TO PUNISH INNOCENT AS WELL AS CULPABLE BEHAVIOR, CONTRARY TO, ET SEQ..
- (j) DUE PROCESS UNDER THE FIFTH AND FOURTEENTH AMENDMENTS BECAUSE THE STATE COURT'S DENIAL OF HIS CLAIM THAT THE AGGRAVATED CRIMINAL SEXUAL ASSAULT VIOLATES DUE PROCESS WHERE CRIMINAL SEXUAL ASSAULT IS NOT A LESSER INCLUDED OFFENSE UNDER THE STATUTE, IS CONTRARY TO OR AN UNREASONABLE APPLICATION OF CLEARLY ESTABLISHED FEDERAL LAW AS DEFINED BY THE UNITED STATES SUPREME COURT.
- (k) DUE PROCESS UNDER THE FIFTH AND FOURTEENTH AMENDMENTS BECAUSE THE STATE COURT'S DENIAL OF HIS CLAIM THAT HIS SENTENCE RESULTED FROM A DOUBLE ENHANCEMENT WHERE THE ACT OF STRIKING THE VICTIM AND RESULTING DEATH WAS UTILIZED TO ENHANCE THE CHARGE OF CRIMINAL SEXUAL ASSAULT TO AGGRAVATED CRIMINAL SEXUAL ASSAULT AND WHERE THE AGGRAVATED CRIMINAL SEXUAL CONVICTION WAS THEN USED TO ENHANCE THE DEFENDANT'S PUNISHMENT TO A THEN DEATH SENTENCE, IS CONTRARY TO OR AN UNREASONABLE APPLICATION OF CLEARLY ESTABLISHED FEDERAL LAW AS DEFINED BY THE UNITED STATES SUPREME COURT.
- (l) DUE PROCESS UNDER THE EIGHTH AMENDMENT BECAUSE THE STATE COURT'S DENIAL OF HIS CLAIM THAT HIS SENTENCE MUST BE VACATED BECAUSE THE 'BRUTAL AND HEINOUS' LANGUAGE IS UNCONSTITUTIONALLY VAGUE ON ITS FACE VIOLATING THE EIGHTH AMENDMENT, IS CONTRARY TO OR AN UNREASONABLE APPLICATION OF CLEARLY ESTABLISHED FEDERAL LAW AS DEFINED BY THE UNITED STATES SUPREME COURT; and
- (m) DUE PROCESS UNDER THE FIFTH AND FOURTEENTH AMENDMENTS BECAUSE THE STATE COURT'S DENIAL OF HIS CLAIM THAT THE EVIDENCE FAILED TO ESTABLISH, BEYOND A REASONABLE DOUBT THAT PETITIONER COMMITTED A FELONY OR MURDER 'IN THE COURSE OF' A FELONY, AS REQUIRED FOR THE APPLICATION OF THE AGGRAVATING FACTOR UPON WHICH HIS SENTENCE WAS BASED, IS BASED ON AN UNREASONABLE DETERMINATION OF FACTS IN LIGHT OF THE EVIDENCE THAT WAS PRESENTED IN THE STATE COURT'S PROCEEDINGS.

IN THE

THE UNITED STATES DISTRICT COURT FOR THE NORTHERN
DISTRICT OF ILLINOIS EASTERN DIVISIONUNITED STATES OF
AMERICA ex rel.,
DREW TERKELL

Plaintiff/Petitioner

Vs.
EDDIE JONES, WARDEN
PONTIAC CORRECTIONAL CENTER.,
Defendant/RespondentNo. 08 C 2328THE HONORABLE
MATTHEW F. KENNELLY
JUDGE PRESIDINGASSISTANT PROOF/CERTIFICATE OF SERVICE
ATTORNEY GENERAL
TO: ERICA K. SEYBURN
100 W. RANDOLPH STREET
CHICAGO, IL 60601
12TH FLOORTHE CLERK OF THE
TO: NORTHERN DISTRICT
OF ILLINOIS
219 S. DEARBORN STREET
CHICAGO, IL 60604PLEASE TAKE NOTICE that on AUGUST 11, 2008, I placed
the documents listed below in the institutional mail at PONTIAC CORRECTIONAL
Correctional Center, properly addressed to the parties listed above for mailing through
the United States Postal ServiceMOTION FOR LEAVE AND SUPPLEMENTAL
CLAIM(S) HEREINPursuant to 28 USC 1746, 18 USC 1621 or 735 ILCS 5/1-109 I declare, under penalty of
perjury that I am a named party in the above action, that I have read the above
documents, and that the information contained therein is true and correct to the best of
my knowledge and belief.DATED: AUG. 11, 2008/s/ Drew Terkell
Name: DREW TERKELL
IDOC No. *N-63220
PONTIAC Correctional Ctr.
POB 99.PONTIAC, IL 61764.